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# Supreme Court of the United States

OCTOBER TERM, 1935

No. 636

JAMES WALTER CARTER,

*Petitioner,*

*vs.*

CARTER COAL COMPANY, *et al.*,

*Respondents.*

No. 651

GUY T. HELVERING, individually and as Commissioner of Internal Revenue of the United States, *et al.*,

*Petitioners,*

*vs.*

JAMES WALTER CARTER, *et al.*,

*Respondents.*

**RESPONSE OF CARTER COAL COMPANY AND ITS OFFICERS AND DIRECTORS, RESPONDENTS IN NO. 636 AND NO. 651, TO MOTION OF JAMES WALTER CARTER, PETITIONER IN NO. 636 AND RESPONDENT IN NO. 651, FOR IMMEDIATE ISSUANCE OF MANDATE AND FOR COSTS, AND MOTION ON BEHALF OF CARTER COAL COMPANY AND ITS OFFICERS AND DIRECTORS FOR ALLOWANCE OF COSTS.**

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PRESS OF W. F. ROBERTS COMPANY, WASHINGTON, D. C.

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Now come Carter Coal Company, George L. Carter as Vice-President and a Director of said Company, C. A. Hall as Secretary-Treasurer and a Director of said Company, John Callahan, Joseph W. Gorman and Walter C. Denham as Vice-Presidents of said Company, respondents in No. 636 and

No. 651, by and through their counsel, Karl J. Hardy, and respond to the motion of James Walter Carter filed herein on May 23, 1936, for immediate issuance of mandate and for costs, as follows:

**Immediate Issuance of Mandate.**

The respondents Carter Coal Company, George L. Carter as Vice-President and a Director of said Company, C. A. Hall as Secretary-Treasurer and a Director of said Company, John Callahan, Joseph W. Gorman and Walter S. Denham as Vice-Presidents of said Company, by the final decree entered below on December 10, 1935, were enjoined, pending final determination of this cause on appeal, from executing or filing an acceptance of the Bituminous Coal Code provided for in said Bituminous Coal Conservation Act of 1935 and from paying the tax called for thereby, upon condition that during the pendency of the cause on appeal there be paid to a depository approved of by that Court a sum equal to one and one-half per centum of the sales price at the mine on sales or other disposals of bituminous coal by the company during the period beginning with November 1, 1935, at the times payments of said amounts under the Act would be due, to be held by the depository pending the final outcome of the litigation. Pursuant to that decree, there has been deposited by the Carter Coal Company amounts totaling more than $35,000, and under the decree an amount in excess of $5,000 will be due and payable into the said depository approved of by said Court on or before June 1, 1936. The motion of said James Walter Carter for an immediate issuance of the mandate is, therefore, concurred in in order that the necessity of depositing the aforesaid

amount pursuant to said decree will be alleviated and the Court is urged to direct the immediate issuance of the mandate.

**Motion for Allowance for Costs.**

The respondents Carter Coal Company, George L. Carter as Vice-President and a Director of said Company, C. A. Hall as Secretary-Treasurer and a Director of said Company, John Callahan, Joseph W. Gorman and Walter C. Denham as Vice-Presidents of said Company, having responded to the said motion of James Walter Carter, by and through their counsel, respectfully move the Court to order that they be allowed their costs and be relieved of any costs in the premises, and in support thereof show as follows:

By rule 32, subsection 3, of this Honorable Court it is provided:

> "3. In cases of reversal of any judgment or decree by this court, costs shall be allowed to the appellant or petitioner, *unless otherwise ordered by the court.* The cost of the transcript of the record from the court below shall be a part of such costs, and be taxable in that court as costs in the case." (Italics ours.)

Under this rule the said James Walter Carter, having been the successful petitioner in No. 636, may be technically entitled to a judgment for allowance of a portion of his costs against these respondents.

As appears from their Answer (R. 39-42), these parties believed the Act to be unconstitutional and economicallly unsound and that it would adversely affect the business of the company if accepted, never-

theless it was believed that the Company should accept the Code provided for by the Act because of the penalty, in the form of a fifteen per cent tax on its gross sales, would be seriously injurious to the company and might result in its bankruptcy.

Furthermore, the voluminous record made necessary by reason of the insistence of the Government officer defendants below in proving the so-called economic defenses set up in Part II of their answer constitutes a substantial part of the costs here involved. The Company or its officers were in no wise responsible for the building up of this voluminous record.

Under these circumstances, it is respectfully submitted that it is inequitable and unjust to assess costs against these respondents and a situation is presented calling for an order of this Honorable Court, relieving these respondents of any responsibility for costs. In so ordering the Court would be acting within the spirit of Rule 32, subsection 3, which expressly anticipates an order by this Court in proper cases relieving the assessment of costs against an unsuccessful respondent.

WHEREFORE, These respondents, Carter Coal Company, George L. Carter, as Vice-President and a Director of said Company, C. A. Hall as Secretary-Treasurer and a Director of said Company, John Callahan, Joseph W. Gorman and Walter C. Denham as Vice-Presidents of said Company, respondents in Nos. 636 and 651, respectfully move the Court for allowance of costs.

KARL J. HARDY,

Counsel for Carter Coal Company and its Officers and Directors, Respondents in No. 636 and No. 651.